IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 247 OF 1996

ALONGWITH

CRIMINAL APPLICATION NO,. 2699 OF 1996

The State of Maharashtra ..... Appellant.

versus

Sukdev Kalu Ubale ..... Respondents.

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Shri D.R.More APP for the State
Mrs. Prajkta P. Shinde for the respondent - appointed

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CORAM ; V.G.PALSHIKAR &
R.C. CHAVAN, JJ.

DATED; 11TH JULY, 2005

ORAL JUDGMENT (Per Palshikar, J.);

1. Criminal Application No.2699 of 1996 allowed. Delay in filing appeal condoned for reasons mentioned therein.

2. Being aggrieved by the judgment dated 13-10-1995 passed by the Additional Sessions Judge, Nashik in Sessions Case No. 102 of 1995, the appellant has preferred this appeal on the ground mentioned in the memo of appeal as also canvassed before us.

3. With the assistance of the learned advocate appearing on behalf of the appellant and the learned APP, we have scrutinised the entire record, and re-appreciated the evidence both oral and documentary as is raised on the record before the Additional Sessions Judge.

4. The prosecutioon case as it emerges from the re-appreciation of evidence stated briefly is that the complainant Balu Dhavalu Ubale is the cousin brother of deceased Mohan Kalu Ubale. It has been alleged that he alongwith his mother, wife and brother resides in his house and the deceased Mohan alongwith his wife and children resides in his house. It has been alleged that the accused resides at some distance from his house and he is addicted to drinking and abusing others under the influence of drink. It has been alleged that because of the said vice of the accused, the complainant and his family members are not on talking terms with the accused. It has been further alleged that on 11-1-1995 at 7.00 to 7.30 p.m. the complainant, his mother and wife were present in his house whereas the deceased Mohan and his wife were present in their house. It has been alleged that after hearing abuses of the accused, he and his mother had come out of his house and at that time they noticed

that the accused was abusing Gulsabai Lahanu Ubale and was also pelting stones at her door. It has been alleged that after they had come out of their houses, the accused also threatened to see them started abusing them and started pelting stones at them. It has been alleged that one of the stones had hit Mohan Kalu Ubale on the left side of his head on the ear and hence, ha had fallen down due to giddiness. It has been alleged that the said Mohan was taken to Municipal hospital, Igatpurio by the complainant, his mother and others, where Dr. Nagavkar had examined him and thereafter Dr. Nagavkar had advised them to take the patient to Civil Hospital, Nashik as the patient was serious. In the meantime, the complainant had gone to the police station and lodged the report vide Exh.25.

5. On the basis of this FIR, investigation was conducted and the accused was prosecuted for offence punishable under section 302 of IPC. The prosecution examined 8 witnesses to prove its case and the learned trial Judge on appreciation of this evidence and other relevant documents came to the conclusion that the prosecution has failed to bring home the charge u/s. 302 IPC as a consequence, he acquitted the accused of the offence with which he is charged. The State has filed its appeal against that acquittal.

6. Even if the entire evidence is accepted, it is very clear that the prosecution has not led any evidence to prove that there was any animosity between the accused and deceased Mohan. It is established on evidence that the accused at the time of incident was drunk, and was pelting stones at the victim. All that has been proved by the prosecution, in the circumstances, is that there was pelting of stones by the accused towards victim, as a result of which victim sustained injuries and subsequently died. In order to constitute the offence of murder, it is necessary to establish that death was homicidal in nature and the accused intended to cause death. Even if the entire evidence is accepted, it is impossible to hold that the accused had any such intention to cause death or even had a knowledge that the death would likely to cause and consequently the entire episode does not fit within the definition of homicidal death as contemplated by the IPC.

7. The learned trial Judge has considered the entire evidence on record and has come to the conclusion that it is impossible to reacch to a finding that the accused caused homicidal death. It was not possible to hold on the evidence that he intended to cause death in view of the fact that he was affected only by pelting

stones. How many stones were pelted where they hit is not very definitely brought out by the evidence on record. Assuming that some stones did hit on the victim, the conclusion that the accused knew that such hitting was likely to cause death, is not possible. The findings given by the learned Judge in the circumstances cannot be said to be purverse or illegal, they are based on the conclusion drawn by the learned Judge from the evidence as a whole. These conclusions cannot be said to be vitiated any error of law or fact. In our opinion even on reappreciation of evidence it is not possible to come to a conclusion that the evidence is adequate to warrant any interference in the order of acquittal. Even if such view is possible, in our opinion, there is no need to choose the same in the present case as there is no error in the appreciation of evidence by the learned trial Judge. There is no substance in this appeal and the same is therefore liable to be dismissed and is accordingly dismissed. In the result both the Revision Application and the appeal against acquittal are dismissed.

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